GOVERNMENT OF
NEWFOUNDLAND
AND LABRADOR

JOINT MANAGEMENT OF NEWFOUNDLAND AND LABRADOR FISHERIES

GOVERNMENT OF
NEWFOUNDLAND AND LABRADOR

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For detailed information
on the proposed
Joint Management
of Newfoundland
and Labrador Fisheries
please visit:

www.gov.nl.ca

104-04935/

PROPOSED JOINT MANAGEMENT REGIME

- The Government of Newfoundland and Labrador is proposing shared and equal joint management of fish stocks adjacent to the province through a Canada/Newfoundland and Labrador Fisheries Management Board (CNLFMB). Authority for the board would be enshrined in enabling legislation passed by both orders of government.

- The proposed board would promote long-term sustainability of adjacent fisheries, conservation of fish resources and habitat, and understanding of ocean ecosystems. The board would also promote recognition of the historical and current socio-economic dependence of communities on fisheries.

- A key function of the board would be to implement fair and equitable principles to govern the allocation of resources, recognizing the traditional and internationally-used principles of adjacency and historical dependency, as well as the economic dependence of resource users on fish stocks.

- The board's responsibilities would include, but not be limited to, conservation and rebuilding plans, consultation and fisheries management, and fisheries science. The current responsibilities of both the federal and provincial governments for harvesting and processing respectively, would in effect, be ceded to the board. In general terms, the board would be responsible for all aspects of management of adjacent fisheries, including regulatory management and development of policy regarding inspection and enforcement responsibilities of the provincial and federal governments.

- Enforcement functions could remain within the respective governments, with general policy coordinated by the board. The province would be responsible for the enforcement of processing regulations and quality standards, while the federal government would retain its current enforcement role.

- Under our proposal, many aspects of oceans management would appropriately remain under federal government control. The province recognizes Canada's international commitments and obligations that must be fulfilled at the national level. The federal government would retain jurisdiction over international negotiations, surveillance, international enforcement, port access, transport and international trade.

- The proposed board would comprise seven members, with three members appointed by each government and a chairperson appointed jointly by both.

- The board would follow management policies and principles established by both governments. The chairperson would have the deciding vote in the event of a tie.

- Fundamental decisions, such as those relating to the opening or closure of a fishery or a conservation plan, could be reversed only by either the board itself or by a joint decision of both governments.

- The board would operate at arms-length from both governments. Government input would be provided in the development of guiding principles and policies in the initial design of the board, but the board would establish its own operating procedures.

- To support the board by providing the necessary scientific research and advice, it is proposed that the current scientific function of the Department of Fisheries and Oceans be moved to a new entity: the Newfoundland and Labrador Fisheries Research Council. The council would report directly to the board and would be responsible for all scientific research currently undertaken by the Department of Fisheries and Oceans in adjacent waters. Transparency and accountability would be inherent to this new relationship.

- On May 14, 2003, Newfoundland and Labrador's House of Assembly unanimously passed a resolution seeking negotiations between the province and the Government of Canada on the establishment of a joint management regime for fisheries. To ensure that both governments enter into this new arrangement as equal partners, the resolution also seeks changes to the Terms of Union that would provide the province with shared jurisdiction over fisheries in waters adjacent to Newfoundland and Labrador. These new arrangements would be entrenched in the Constitution through an amendment to the province's Terms of Union with Canada.

- Since 1497, the fishery has been prosecuted in the waters off Newfoundland and Labrador, flourishing for most of its 500-year history. In the latter part of the twentieth century, poor scientific research, predatory national and international fisheries policies, and superior harvesting technology combined to decrease many fish stocks to critically low biomass levels. Moratoria were imposed to call a halt to fishing from stocks that once were the most bountiful food resource in the world.

- The division of responsibilities between the Government of Canada and the provinces on the governance of fisheries is complicated and often contradictory. Lack of coordination, coupled with competition of interests, is a root cause of the situation we find ourselves in today. The closure of the Gulf and Northern cod fisheries is not the first instance of the Province's disagreement with the Government of Canada on fisheries management.

- For the past twenty-four years, successive Governments of Newfoundland and Labrador have sought to enter into joint management regimes with the Government of Canada to ensure the effective and sustainable management of our fishery resources. To date, unilateral federal management has not worked in the best interest of this Province or the adjacent fish stocks.

- Joint management would seek to eliminate policy duplication and contradictions, and provide for a more balanced approach to the management of fish stocks adjacent to provinces while still maintaining national interests. Joint management is not intended to usurp federal authority or exclude the interests of other provinces.

- The proposed joint management principles and framework recognize the common property character of the resource and the federal responsibility to ensure that the resource is properly managed on behalf of all Canadians.

- Integration of federal and provincial fisheries responsibilities through a jointly-managed Canada/Newfoundland and Labrador Fisheries Management Board would reduce federal-provincial conflict over fisheries policy, provide a stable framework for resource management and industry investment, allow the province to incorporate consistent fisheries policy into its broader economic and social plans, and remove the potential for arbitrary or inconsistent fisheries management decisions.

- The proposed Canada Newfoundland and Labrador Fisheries Management Board would promote long-term sustainability of adjacent fisheries, conservation of fish resources and habitat, and understanding of ocean ecosystems.

- Conservation must be the cornerstone of joint management. Scientific research in support of the conservation, management and development of ocean resources is exclusively a federal responsibility. Scientific advice in the late 1980s through the early 1990s called for dramatic quota reductions; but the federal government enacted only fractions of the recommended reductions, ignoring its own science. Despite the evolving fisheries crisis, funding for science within the Newfoundland and Labrador region has declined over the past ten years.

- The Government of Newfoundland and Labrador holds the strong view that recovery of resources and sustainable fisheries cannot be achieved under the existing management approach.

- Nowhere has the impact of mismanagement been greater than in Newfoundland and Labrador. These changes must occur so that better decisions can be made in the future.

- The Government of Newfoundland and Labrador hopes to engage the Government of Canada in discussions on joint fisheries management. The Province will hear the views of Newfoundlanders and Labradorians as we seek to advance this critical issue.

Canada/Newfoundland and Labrador Fisheries Management Board

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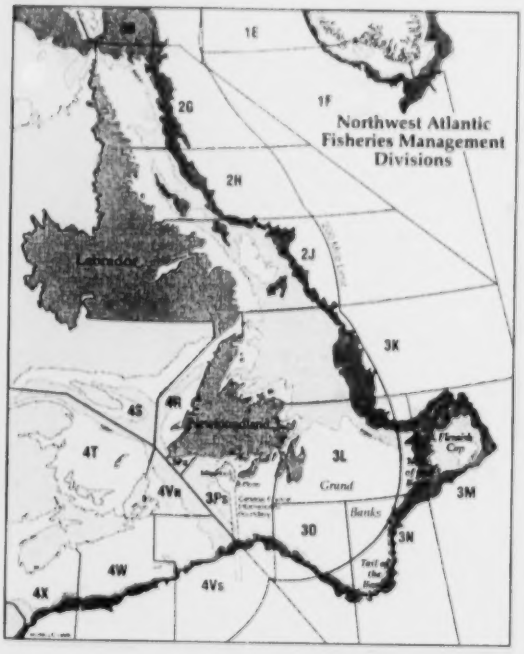
Canada/Newfoundland and Labrador Fisheries Management Board



GOVERNMENT OF
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WHITE PAPER

JOINT MANAGEMENT OF NEWFOUNDLAND AND LABRADOR FISHERIES

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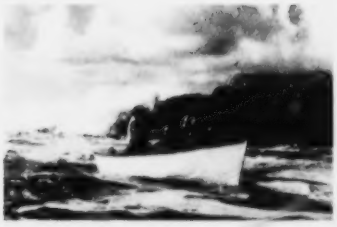

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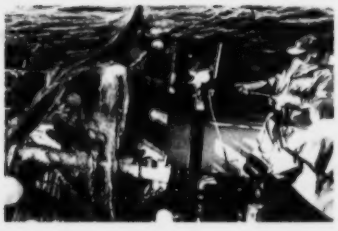

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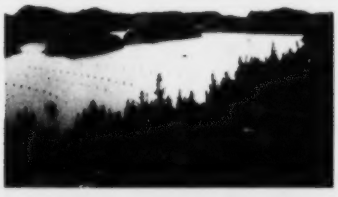

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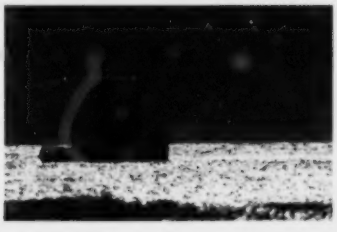

GOVERNMENT OF
NEWFOUNDLAND
AND LABRADOR

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JOINT MANAGEMENT OF NEWFOUNDLAND AND LABRADOR FISHERIES

Letter from the Premier

The recent federal decision to close the Northern and Gulf cod fisheries is strong evidence of a need for an alternative to our present approach to fisheries management. There is a need for a more rigorous approach to fisheries management, one that ensures these stocks recover to their historic levels and that other fisheries do not fall to the same fate.

The Government of Newfoundland and Labrador is calling for a new approach to fisheries decision making: a joint management regime that would effectively integrate federal and provincial responsibilities, reduce federal-provincial conflict over fisheries policy, provide a stable framework for resource management and industry investment, and remove the potential for arbitrary or inconsistent fisheries management decisions.

While the approach set out in this paper is new, our commitment to joint management is not. Newfoundland and Labrador has been pursuing joint management for almost a quarter century and has a well-developed proposal to put this type of sustainable development structure in place. There is an urgent need to act, and this paper lays out a detailed plan which will form the basis for negotiations with the Government of Canada.

The fact that other partners are also dependent upon the resources adjacent to Newfoundland and Labrador must also be recognized, and this fact must not be used as an excuse for inaction. The proposal set out in this document respects and preserves the traditional and historic rights of non-Newfoundland and Labrador interests in our fishery. This plan is put forward as a basis for change. We will work with all our partners in the Federation to further develop and improve our joint management plan so that it can serve as a model for fisheries management right across our nation.

This call for joint fisheries management reflects the will and desire of Newfoundlanders and Labradorians to be engaged as equal partners in the Canadian Federation. It demonstrates the type of flexibility that is needed to ensure that governments remain adaptable and responsive to contemporary realities and the people they have been mandated to serve. I believe this type of flexibility must be the basis for renewal, growth and strengthening of our great nation.

In coming months the contents of this paper will stand as a basis for discussion and action. It is my hope that the Government of Canada will engage in discussions on the basis of this paper. I also look forward to hearing the views and concerns of Newfoundlanders and Labradorians as we seek to advance this issue so critical to our future.

Sincerely,

Roger D. Grimes
Premier, Newfoundland and Labrador

Executive Summary

- On May 14, 2003, Newfoundland and Labrador's House of Assembly unanimously passed a resolution seeking negotiations between the province and the Government of Canada on the establishment of a joint management regime for fisheries. To ensure that both governments enter into this new arrangement as equal partners, the resolution also seeks changes to the Terms of Union that would provide the province with shared jurisdiction over fisheries in waters adjacent to Newfoundland and Labrador. These new arrangements would be entrenched in the Constitution through an amendment to the province's Terms of Union with Canada.

- Since 1497, the fishery has been prosecuted in the waters off Newfoundland and Labrador, flourishing for most of its 500-year history. In the latter part of the twentieth century, poor scientific research, predatory national and international fisheries policies, and superior harvesting technology combined to decrease many fish stocks to critically low biomass levels. Moratoria were imposed to call a halt to fishing from stocks that once were the most bountiful food resource in the world.

- The division of responsibilities between the Government of Canada and the provinces on the governance of fisheries is complicated and often contradictory. Lack of coordination, coupled with competition of interests, is a root cause of the situation we find ourselves in today. The closure of the Gulf and Northern cod fisheries is not the first instance of the Province's disagreement with the Government of Canada on fisheries management.

- For the past twenty-four years, successive Governments of Newfoundland and Labrador have sought to enter into joint management regimes with the Government of Canada to ensure the effective and sustainable management of our fishery resources. To date, unilateral federal management has not worked in the best interest of this Province or the adjacent fish stocks.

- Joint management would seek to eliminate policy duplication and contradictions, and provide for a more balanced approach to the management of fish stocks adjacent to provinces while still maintaining national interests. Joint management is not intended to usurp federal authority or exclude the interests of other provinces.

- The proposed joint management principles and framework contained within this paper recognize the common property character of the resource and the federal responsibility to ensure that the resource is properly managed on behalf of all Canadians.

- Integration of federal and provincial fisheries responsibilities through a jointly-managed Canada/Newfoundland and Labrador Fisheries Management Board would reduce federal-provincial conflict over fisheries policy, provide a stable framework for resource management and industry investment, allow the province to incorporate consistent fisheries policy into its broader economic and social plans, and remove the potential for arbitrary or inconsistent fisheries management decisions.

- The proposed Canada/Newfoundland and Labrador Fisheries Management Board would promote long-term sustainability of adjacent fisheries, conservation of fish resources and habitat, and understanding of ocean ecosystems.

- The Board's responsibility would include but not be limited to conservation and rebuilding plans, harvesting plans, consultation and fisheries management, and fisheries science. Authorities resting with the Board would include authority to establish Total Allowable Catches (TAC), as well as issuance, renewal or cancellation of harvesting licences. Currently, the first authority rests with the federal government. In conjunction with this, the Board would assume responsibility for licensing policy from the Province.

- In general terms, the Board would be responsible for all aspects of management of adjacent fisheries, including regulatory management and development of policy regarding inspection and enforcement responsibilities of the provincial and federal governments.

- Conservation must be the cornerstone of joint management. Scientific research in support of the conservation, management and development of ocean resources is exclusively a federal responsibility. Scientific advice in the late 1980s through the early 1990s called for dramatic quota reductions for Northern cod; but the federal government enacted only fractions of the recommended reductions, ignoring its own science. Despite the evolving fisheries crisis, funding for science within the Newfoundland and Labrador region has declined over the past ten years.

- This paper also proposes the formation of the Newfoundland and Labrador Fisheries Research Council. It is proposed that the current scientific function of the Department of Fisheries and Oceans be moved to this new entity. The Council would report directly to the Canada /Newfoundland and Labrador Fisheries Management Board and would be responsible for all scientific research currently undertaken by the Department of Fisheries and Oceans in adjacent waters. Transparency and accountability would be inherent to this new relationship.

- The Government of Newfoundland and Labrador holds the strong view that recovery of resources and sustainable fisheries cannot be achieved under the existing management approach.

- Nowhere has the impact of mismanagement been greater than in Newfoundland and Labrador. These changes must occur so that better decisions can be made in the future.

- In the coming months, the contents of this paper will stand as a basis for discussion and action. The Government of Newfoundland and Labrador will undertake to engage the Government of Canada in discussions on the basis of this paper. The Province will hear the views of Newfoundlanders and Labradorians as we seek to advance this critical issue.

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1.0 Introduction

On May 14, 2003, Newfoundland and Labrador's House of Assembly unanimously passed a resolution seeking negotiations between the province and the Government of Canada on the establishment of a joint management regime for fisheries. To ensure that both governments enter into this new arrangement as equal partners, the resolution also seeks changes to the Terms of Union that would provide the province with shared jurisdiction over fisheries in waters adjacent to Newfoundland and Labrador. These new arrangements would be entrenched in the Constitution through an amendment to the province's Terms of Union with Canada.

The pursuit of joint fisheries management has been a long-standing priority of the Government of Newfoundland and Labrador. The importance of this issue was most recently highlighted by the federal decisions to impose moratoria on the Northern (2J3KL) and Gulf (4RS3Pn) cod stocks. These are decisions that the people of Newfoundland and Labrador reject absolutely. In the late 1970s to mid 1980s, and again in the 1991-1993 period, the province promoted joint management as an option to improve fisheries management. Continued problems in the fishery prompted the Government of Newfoundland and Labrador to propose joint fisheries management in its 1999 strategic economic plan *Securing Our Future; The Renewal Strategy for Jobs and Growth.*

The Government of Newfoundland and Labrador's call for joint management is not intended to usurp the authority or exclude the interest of other provinces or territories with existing fishing rights in waters adjacent to the Newfoundland and Labrador coastline. The principles of adjacency and historical dependence would apply under joint management. Indeed, these principles would be applied with greater transparency and clarity under such a plan. Where non-Newfoundland and Labrador interests participate in fisheries, the current access and historical presence in fisheries would be respected.

The current system of Canadian fisheries management is meeting neither the needs of Newfoundland and Labrador, nor the needs of the country as a whole. Lack of a single policy framework to guide decision-making in the areas controlled by each separate order of government undermines effective industry development. Integration of federal and provincial responsibilities would enable a joint management authority to align harvesting and processing decisions, replacing conflict with consistency. A joint management system would institute coherence and cooperation in the implementation of all fisheries management decisions.

The fact that other provinces have interest in these resources should not be used as a reason for maintaining the status quo. Current arrangements are simply not sustainable. Rather, we should accept the challenge of finding better solutions, so that Canadian fisheries management is renewed and strengthened.

Joint management of the Newfoundland and Labrador fishery is the most effective way to achieve responsible fisheries management and related economic development. Integration of federal and provincial fisheries responsibilities through a jointly managed Canada/Newfoundland and Labrador Fisheries Management Board would reduce federal-provincial conflict over fisheries policy, provide a stable framework for resource management and industry investment, and allow the province to incorporate consistent fisheries policy into its implementation of broader economic and social plans. Furthermore, it would remove the potential for arbitrary or inconsistent fisheries management decisions.

A properly-managed fishery can contribute to the economic and social fabric of Newfoundland and Labrador in perpetuity. The wealth generated by the rich biological marine resources of the Grand Banks can continue to benefit the people of this province and this nation long after non-renewable resources such as oil and mineral deposits are extracted and consumed. Our renewable marine resources must be protected, fostered and encouraged to grow: it is our

duty to preserve these resources for future generations of Newfoundlanders and Labradorians, for Canadians and for humankind.

In coming months the contents of this paper will stand as a basis for discussion and action. It is the Province's hope that the Government of Canada will engage in discussions on the basis of this paper. We look forward to the support of Newfoundlanders and Labradorians as we seek to advance this issue, which is so critical to our future.

2.0 Historical Contexts

The Newfoundland and Labrador Fishing Industry

For most of its 500-year history, the Newfoundland and Labrador fishing industry flourished, providing bounty for the world's great fishing fleets. Indeed, our abundant cod stocks and prosperous fishery were the drivers for both historical and modern-day settlement of the province. They were - and remain - the very fibre of our social, cultural and economic fabric.

Almost immediately following John Cabot's voyage to Newfoundland and Labrador in 1497, the great fishing fleets of Europe could be found off our shores exploiting then-abundant Northern cod stocks. The French, Spanish and Portuguese concentrated on the Banks of Newfoundland where fish was salted aboard ship and brought directly back to the European market. The English, lacking access to abundant supplies of salt, developed a system which combined light salting, followed by washing and then drying fish in the open air. The English would harvest from small boats close to shore, returning at evening to process their catch. Processing operations were established on shore in areas closest to the fishing grounds. On these sites fishermen built bunkhouses and stages for splitting, curing and drying fish. These sites developed into settlements circumscribing the coast of Newfoundland and Labrador.

Over the past century, the Newfoundland and Labrador fishery changed substantially: what was once a trade in salt cod developed into a modern, competitive industry based on fresh and fresh frozen multi-species products. At the turn of the last century, cod was the primary harvest species; at the outbreak of World War I, some 40,000 Newfoundlanders and Labradorians secured their livelihoods from the fishery. The 1949 entry of Newfoundland and Labrador into Canada - and thus the mainstream of North America - precipitated application of new technology and provided opportunity to introduce new types of fish products to a new and much enlarged marketplace. The industry continued to produce salt cod together with the fresh and frozen products that would eventually dominate all other forms of production.

An appetite for fresh fish was the key driver for introducing new harvesting technologies in the predominant inshore sector, as well as for establishing large processing facilities dependent on an offshore trawler fleet for its supply. Foreign offshore trawlers, however, decimated fish stocks through uncontrolled and unregulated fishing on the Continental Shelf. In time, this overexploitation had an impact on cod, flatfish and other groundfish stocks, from which most have never recovered.

Throughout the 1960s and early 1970s the large foreign presence in waters adjacent to the province resulted in record catches. At peak, throughout the late 1960s, the annual catch of all species totalled over 1.7 million tonnes - almost 3.7 billion pounds of fish. Stocks could not sustain this level of harvest and, since that time, most have collapsed.

In 1977 a Canadian 200-mile limit was established, leading to unprecedented expansion in the domestic fishery. Optimistic estimates of resource availability pushed expansion in both the processing and the harvesting sectors. With an anticipated catch of more than one million tonnes of groundfish as stocks were brought under clear Canadian control, domestic harvesting and processing capacity expanded. Stocks, did not increase as expected, however, and over-capacity remained in the groundfish industry.

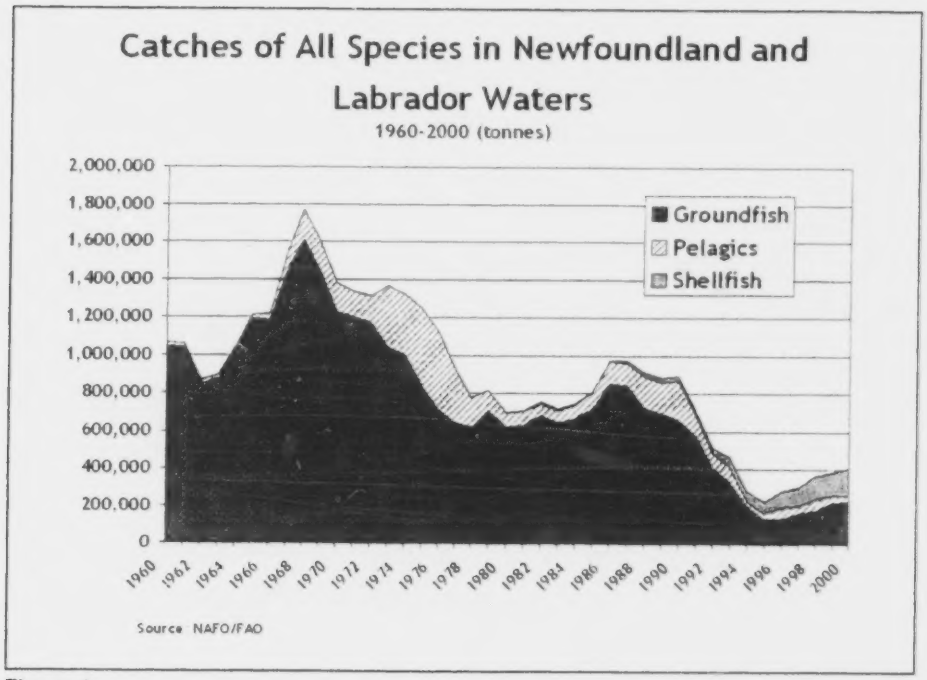

Figure 1

This situation continued until 1992, when a fishing moratorium was imposed on the once-great Northern cod stock. Moratoria on other groundfish soon followed. Over the past ten years, the fishing industry has been transformed from dependence on groundfish to a more diverse utilization of less abundant species such as snowcrab and shrimp, especially where groundfish stocks have not recovered.

Consequently, Newfoundland and Labrador's fishing industry is now much smaller than it was ten years ago. Shellfish processing is less labour intensive than groundfish processing, which has resulted in a decrease of close to 15,000 in processing sector employment and localization of processing activities in fewer communities.

Yet the fishery remains the single most important industry in Newfoundland and Labrador. The future of communities unable to benefit from the expanded shellfish industry therefore rests with the recovery of groundfish stocks, especially Northern and Gulf cod stocks. The province, however, does not have any meaningful input into or authority over decisions related to these resources. As a result, the fear remains that federal management could again lead to collapse, wiping out the new industry we have fought to build since the groundfish moratoria of the early 1990s.

Today, there are more than 40 commercial marine species harvested in waters adjacent to this province. Many of these once-healthy stocks are now in jeopardy. Most groundfish stocks have been decimated. Indeed, one of the largest single fish stocks in the Northern hemisphere, the Northern cod, has been managed to commercial extinction. Besides cod, many other fish stocks are under moratoria or in decline and appropriate measures have not been taken to ensure their recovery.

Table 1 illustrates the large number of species under moratoria or in decline. Clearly, federal fisheries management since 1949 has failed miserably, particularly since 1977 when Canada assumed complete control of fisheries management within the 200-mile limit. Federal fisheries management has worked neither for this province, nor for Canada as a whole.

Summary of Major Fisheries Under Moratoria or Declining in Waters Adjacent to Newfoundland and Labrador

Species	Average Annual Catches 1981-1990 (tonnes)	NAFO Area	Status
Northern Cod	214,000	2J3KL	No Directed Fishery
Gulf Cod	82,000	3Pn4RS	No Directed Fishery
3Ps Cod	42,500	3Ps	15,000
3NO Cod	35,000	3NO	No Directed Fishery
Redfish	17,000	2+3	No Directed Fishery
Gulf Redfish	25,000	4RS	Index fishery 2,000
American Plaice	40,000	3LNO	No Directed Fishery
Witch Flounder	8,500		No Directed Fishery
Haddock	9,600	3Ps/3LNO	No Directed Fishery
Snow Crab		2J, 3PS	Reductions in 2J, 3Ps
Subtotal	473,600		
Capelin	60,000	Adjacent	30,000
Total	**533,600**		

Table 1

Conservation

The Government of Newfoundland and Labrador has an extensive record of support for conservation. In fact, the province raised concerns regarding Northern cod management several times prior to the first moratorium in 1992. In 1990, the federal government released the Harris Review Panel's *Independent Review of the State of the Northern Cod Stock*. In response, Newfoundland Fisheries Minister Walter Carter stated: "The province's position on the TAC for the 2J3KL stock has consistently been conservation-oriented to permit rebuilding and stability. Current evidence suggesting recent harvesting levels beyond F_{max} give rise to major concerns." In January 1990 Premier Clyde Wells raised concerns about the Total Allowable Catch (TAC) of 197,000 tonnes for Northern cod announced in the Atlantic Groundfish Management Plan. Premier Wells stated that "the basic guideline here should be conservation and, in the context of the work of the Harris Review Panel, the province would have been more comfortable with a TAC of 190,000 tonnes." He went on the say that "it should be part of an overall plan to reduce the TAC further in future years so as to ensure proper restoration of the stock."

Scientific research in support of the conservation, management and development of ocean resources is also a federal responsibility. Despite the major transformations that have occurred in the fishery, and the serious crises facing some fish stocks, funding for science within the Newfoundland and Labrador region has declined over the past ten years. The interrelationship between species such as seals and groundfish are often ignored. Research on capelin, a key food source for groundfish, has been virtually eliminated. The industry is now almost completely dependent on shellfish stocks, yet scientific information on these fish populations is very limited and little is known about the interrelationships between all species populating the waters adjacent to this Province.

One of the most important innovations in fisheries management to come out of the groundfish crisis has been creation of the Fisheries Resource Conservation Council (FRCC). The FRCC seeks to integrate industry knowledge gained from day-to-day working experience with scientific advice emerging from research. The province has consistently supported the work of the FRCC, as well as the fact that its decisions are consistently conservation-directed.

Additionally, as recently as last month, despite the hardship imposed by crab quota cuts on the south coast and southern Labrador, the province supported the Department of Fisheries and Oceans (DFO) decisions to reduce the TAC for these stocks as necessary conservation measures.

Proposing Joint Management

The division of fisheries-related authorities and responsibilities between the provinces and the federal government is complex. The Parliament of Canada has legislative authority for seacoast and inland fisheries under section 91(12) of the *Constitution Act, 1867*. The Government of Canada exercises this jurisdiction in part through its *Fisheries Act*, which provides for the federal minister's significant authority and discretion over virtually all resource and harvesting matters. Provincial constitutional authority is conferred by section 92 of the *Constitution Act, 1867*, which relates to property and civil rights in the province. By virtue of this power the province regulates all aspects of fish processing. Unfortunately, conflicting policy interests have placed detrimental pressures on fish stocks. Newfoundland and Labrador's proposal of joint management seeks to eliminate policy duplication and conflict. It also seeks to bring appropriate balance to national and provincial interests in the management of stocks adjacent to provinces.

Since the late 1970s successive Governments of Newfoundland and Labrador have sought joint fisheries management with the Government of Canada in order to ensure effective and sustainable management of our living marine resources.

Between 1979 and 1986, the Government of Newfoundland and Labrador proposed concurrent jurisdiction over fisheries management. Concurrent jurisdiction would have required a new division of powers through an amendment to the Canadian Constitution. Agreement was not reached on this matter during the constitutional negotiations.

In 1986 the *Fisheries Policy and Community Development: Proposal for* a *Revised Approach to Managing the Inshore Fisheries in Newfoundland* established by Newfoundland's Royal Commission on Employment and Unemployment recommended that a Canada - Newfoundland Fishery Policy Board, similar to the Canada - Newfoundland Offshore Petroleum Board, be established. "*Building on our Strengths: Report of the Royal Commission on Employment and Unemployment in Newfoundland*" also recommended establishing a Canada - Newfoundland Fisheries Policy Board. During the 1987 - 1989 period, the Province revised its policy position to support this recommendation.

From 1990 - 1996, the Government of Newfoundland and Labrador maintained this position. Joint management was pursued with vigor, particularly following the moratorium on the Northern cod fishery in 1992. The position was supported on various occasions by independent panels commissioned by either the federal or the provincial government.

In 1989 the DFO commissioned the Harris Review Panel on Northern cod. Its 1990 "*Independent Review of the State of the Northern Cod Stock*" recommended that the Governments of Canada and Newfoundland establish a Board or Commission to manage the fishery. The recommendation has never been acted upon by the Government of Canada, although it received the support of the Government of Newfoundland and Labrador.

In 1990 the Maloney Commission's *"Report of the Commission of Enquiry into the Alleged Erosion of the Newfoundland Fishery by Non-Newfoundland Interests"* recommended the establishment of a joint management board or commission.

In 1991 the province released *Effective Fisheries Management: Joint Management and Government Cooperation in the Newfoundland and Labrador Fishery* as further evidence of the province's continuing commitment in pursuit of this goal.

Similarly, in 1992 the Strategic Economic Plan *"Change and Challenge: A Strategic Economic Plan for Newfoundland and Labrador"* was released, stating: "The Province will aggressively pursue the implementation of a joint fisheries management board (modeled on the Canada-Newfoundland Offshore Petroleum Board) whereby a comprehensive development plan can be put into effect." In 1993 the Government of Newfoundland and Labrador expressed continued commitment to the establishment of a Canada - Newfoundland Fisheries Management Board in its report *"Changing Tides: A Consultative Document on the Fishery of the Future."*

From 1996 to 2001, the Province pursued increased cooperation and coordination with the federal government. Several important agreements were signed, including the *Agreement on Interjurisdictional Cooperation* and the *Canada - Newfoundland MOU on Emerging Fisheries Development.*

This approach has also met with some measure of support within the federal government. In 1998 DFO released its Panel study on *Partnering in Canada's Fishing Industry.* It recommended against going forward with partnering legislation in favour of pursuing co-management.

In 2001 the Government of Newfoundland and Labrador again called for joint management, in response to DFO's release of *"The Management of Fisheries on Canada's Atlantic Coast: A Discussion Document on Policy Directions and*

Principles", as part of the Atlantic Fisheries Policy Review. This position was echoed in the province's March 2001 final report on the *Renewal of Jobs and Growth*. Again, the province committed to vigorous pursuit of a Canada-Newfoundland Fisheries Management Board.

In November 2001 the province released the *Report of the Special Panel on Corporate Concentration in the Fishing Industry*. The panel called for the establishment of a Canada - Newfoundland and Labrador Fisheries Policy Coordination Council.

These reports clearly demonstrate that the pursuit of joint fisheries management is not a whim or simple fancy on the part of this province or its people. The need for a new way - a joint and collaborative way - of managing the fishery has been a long-standing priority. Building on this large body of work, the later sections of this report lay out the basic elements of joint management and the principles that should guide this arrangement.

3.0 The Current Decision-making Process

Canada's fisheries management and administration occur within a distinct legal framework. The authority of the federal government in fisheries matters is embodied primarily in two statutes: the *Department of Fisheries and Oceans Act*, R.S.C. 1985, c.F-15 and the *Fisheries Act*, R.S.C. 1985, c.F-14. The province's jurisdiction over fish processing matters is exercised mainly through the *Fish Inspection Act*, R.S.N. 1990, c.F-12 and the *Fish Inspection Regulations*, C.N.R. 1141/96.

The current system is flawed. The federal minister's complete authority opens the access and allocation process to pressure from interest groups and effectively prevents establishment of an open and transparent access and allocation process. In practice, federal criteria for resource allocation are applied inconsistently,

discrediting management planning and consultation, as well as creating unpredictable demands on the resource.

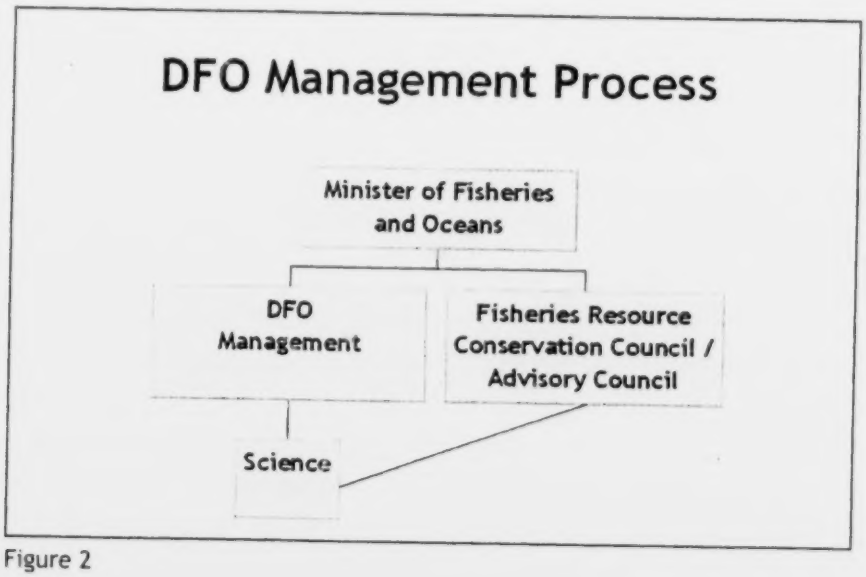

Figure 2

Lack of a single policy framework to guide decision-making in the areas controlled by each separate order of government impedes coordinated industry development. Integration of federal and provincial responsibilities would enable a joint management authority to align harvesting and processing decisions, replacing conflict with consistency. A joint management system would institute coherence and cooperation in implementation of all fisheries management decisions.

4.0 Moving Forward

Advantages of an Open and Transparent System

A transparent fisheries management system will provide a predictable policy and regulatory environment. Clear rules that are consistently applied would

assist stakeholders in making business and investment decisions. While the federal government has attempted to bring a degree of transparency to fisheries management through the establishment of advisory committees and the FRCC. The Minister of Fisheries and Oceans has no obligation to follow advice provided through this process. Fair, predictable and transparent decision-making is essential to the future of the fishery. This can be achieved only by ensuring that decision-making policies and procedures are laid out in legislation and that regulations are available for all to see.

Of particular concern are the rules related to access to resources. Decisions relating to access to resources must be clear and transparent. If they are made without justification or advisory committee support, they encourage individuals or special interest groups to demand similar treatment. This can create a confrontational atmosphere. Such confrontation leads to wasted time and energy, leaving important conservation and management issues insufficiently attended.

Respect for the Rights of Adjacency and Historic Interest

It is the long-standing position of the Government of Newfoundland and Labrador that respect for historic interests and adjacency must form the foundation of fisheries management. The province advocated these principles to the Independent Panel on Access Criteria that was established by the Minister of Fisheries and Oceans in 2001. In the absence of a federal commitment to these principles, the Government of Newfoundland and Labrador is relegated simply to the status of a special interest group, in the management of fisheries immediately adjacent to its shores, and has no voice, despite the critical impact that management decisions have on the provincially-managed processing sector. Joint management would remedy this by ensuring that the province has a direct say in the decisions taken on its adjacent fisheries.

Joint management would establish basic rules and procedures for stock allocation, protecting access for adjacent and traditional resource users. Affirmation of this basic principle is essential for all those who depend upon the resources in the waters adjacent to Newfoundland and Labrador.

A new joint management regime would protect allocations in waters adjacent to the Newfoundland and Labrador coastline where non-Newfoundland and Labrador interests have historical dependence. Joint management would bring greater fairness and certainty in the decision-making process.

This measure of protection is important: it would provide consistency and thus support industry investment; it will also enable more productive economic development planning in rural areas of Canada in greatest need of economic growth and diversification.

5.0 Joint Management

As noted above, the goals of joint management would be to establish a more predictable and open system, to improve industry efficiency and stability, to coordinate federal and provincial economic and social policy related to the fishing industry, and to protect the health of fish stocks while ensuring that people dependent on marine resources can derive a living from them.

A more predictable system would enable governments and industry to properly plan their activities. Uncertainty increases the business risk associated with harvesting and processing fish resources; decreasing the stability of the industry can increase the cost of doing business. Large investments can be placed at risk if new entrants can access the resource at any time, potentially requiring operators to recoup capital investments over a shorter period than in other industries.

Current fisheries management practices, combined with inconsistent federal and provincial policies, have created a high degree of uncertainty in relation to resource health and availability of raw material. From year to year, harvesters and processors seldom can predict with certainty the amount of product that will be harvested and sold. Additionally, new entrants are often added to the system, and often in a haphazard manner, thereby reducing the certainty that existing players in the industry should enjoy and upon which they have based their investments.

5.1 A New and Clear Approach

The foundation of the Government of Newfoundland and Labrador's position on joint management may be found in the resolution adopted by the House of Assembly on May 14, 2003. This position combines past approaches into a single integrated plan. The plan would make both governments equal partners by putting them on an equal constitutional footing and would establish a joint management board, through an amendment to the Terms of Union, by which these partners could exercise their authorities.

However, joint management is not simply about a division of powers - "who does what" and "who has a say" in the fishery. It is about ensuring a more effective and transparent conservation strategy for guiding and rebuilding fish stocks. Core priorities for any joint management regime must include:

- *development and implementation of a conservation and re-building plan aimed at the achievement of long-term sustainability of the fisheries in the waters adjacent to Newfoundland and Labrador and in particular a plan that would achieve the recovery of the ground fish stocks;*

- *development and implementation of fisheries harvesting plans, including the establishment of Total Allowable Catches, based on the principles of conservation, sustainability, adjacency and the long-term well-being of the fishing communities of rural Newfoundland and Labrador;*

- *establishment of programs in Newfoundland and Labrador to enhance knowledge and understanding of the ocean ecosystems adjacent to Newfoundland and Labrador through the encouragement and support of scientific research and the utilization of customary and experiential knowledge of the fisheries possessed by fish harvesters.*

5.2 Shared and Equal Authority

As previously stated, the constitutional division of powers allocates authority to Parliament for seacoast and inland fisheries and to the province for all aspects of fish processing. Over the past 50 years, however, the need for coordination of policies and increased responsibility for the province has been clearly recognized in successive independent reports. Effective coordination of policies would reduce federal-provincial conflict.

The approach proposed by Newfoundland and Labrador is consistent with international convention. Had the province remained an independent nation, it would now have the right to manage its fishing resources to 200 miles. Newfoundland and Labrador reluctantly gave up its right to fisheries management when it joined Canada, under assurance that the resources would be managed for the benefit of the province. This has not been the case. Therefore, it is important that appropriate authority for the resource on which its main industry is based be returned to Newfoundland and Labrador, so that it has an equal say in fisheries management.

Under this proposal shared jurisdiction would include:

1. **All fisheries in the territorial sea - that is, within 12 miles of land as defined for national jurisdiction;**

2. **All fisheries for sedentary species on the continental shelf in adjacent areas; and,**

3. **Within 200 miles, all fisheries in adjacent areas where Newfoundland and Labrador historically has a preponderance of the total allowable catch.**

These definitions follow from the United Nations Convention on the Law of Sea (UNCLOS). Under the Convention, coastal states hold complete control over the territorial sea, over sedentary species on the continental shelf and over all fisheries within 200 miles. While Canada is not a signatory to UNCLOS, it accepts its principles as part of customary international law. Indeed, these general definitions are for the most part contained in the federal *Oceans Act*.

UNCLOS uses the adjacency principle as its first criterion in establishing state boundaries at sea. Twelve-mile territorial limits (Article 2-16), 24-mile contiguous zones (Article 33) and Exclusive Economic Zones [EEZ] (Articles 55-75) are defined with reference to waters adjacent to coastal states. Thus, coastal states have the right to use for their benefit the living and nonliving resources in adjacent waters within these boundaries (Article 56).

UNCLOS gives priority resource access to adjacent states and denies access, even if there is a surplus, to other interests when an adjacent state's coastal communities are heavily dependent on the resource. Under UNCLOS, community dependence can be further interpreted as dependence on the living resources in general, rather than dependence on any single species. This is important when resource use changes from one species to another.

UNCLOS obliges coastal states to properly manage resources within their jurisdictions (Article 61). Conservation is central to proper management, on the principle that the coastal state holds stewardship of the resource not only for its own people but for successive generations of humankind. The importance of conservation is reaffirmed in the 1995 *Agreement on Conservation and Management of Straddling Fish Stocks and Highly Migratory Species*, which recognizes the importance of proper resource management and the potential impact of fisheries outside a state's 200-mile limit on resources within the EEZ.

The possible areas that could be covered by a Canada - Newfoundland and Labrador Fisheries Management Board would be determined through negotiation between the two orders of government. On a preliminary basis, it is assumed that this would include the current NAFO area designations immediately adjacent to the Newfoundland and Labrador coastline.

Some of the fisheries in these adjacent waters are prosecuted by other Canadians. As noted previously, their access to marine resources would be respected under this proposal for joint management.

5.3 The Canada/Newfoundland and Labrador Fisheries Management Board

In order to administer shared and equal joint management of adjacent fish stocks, a Canada/Newfoundland and Labrador Fisheries Management Board (CNLFMB) should be established. The resolution for establishment of this Board also requires that the Board and its authority be enshrined in the Terms of Union. Enabling legislation would have to be passed by both orders of government with respect to its operations. This would necessitate reopening a section of the Canadian Constitution. As part of this process, appropriate consultations and negotiations with other provinces will be initiated and will likely take an extended period.

The proposed Canada/Newfoundland and Labrador Fisheries Management Board would promote long-term sustainability of adjacent fisheries, conservation of fish resources and habitat, and understanding of ocean ecosystems. A council would be established to provide scientific and management advice in support of this function. The CNLFMB would also promote recognition of the historical and current socio-economic dependence of communities on fisheries.

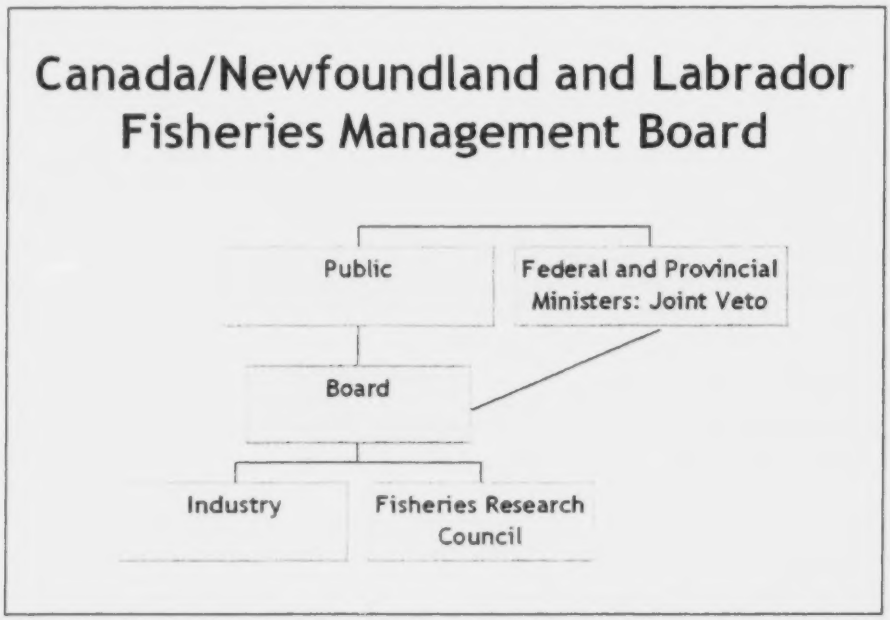

Figure 3

A key function of the Board would be to implement fair and equitable principles to govern the management of resources. These would recognize the traditional and internationally-used principles of adjacency and historical dependency, as well as the economic dependency of resource users on fish stocks.

The Board's responsibility would include but not be limited to conservation and rebuilding plans, harvesting plans, consultation and fisheries management, and fisheries science. Authorities resting with the Board would include authority to establish Total Allowable Catches (TAC), as well as issuance, renewal

or cancellation of harvesting and processing licenses. Currently, the first authority rests with the federal government and the second with the provincial government.

In general terms, the Board would be responsible for all aspects of management of adjacent fisheries, including regulatory management and development of policy regarding inspection and enforcement responsibilities of the provincial and federal governments.

Specific responsibilities would include:

(a) *establishing and implementing integrated fisheries management, conservation harvesting and recovery plans for fish stocks;*

(b) *establishing total allowable catches for fish stocks;*

(c) *distributing allocations within the allowable catch;*

(d) *opening and closures of fisheries;*

(e) *conservation and habitat preservation measures;*

(f) *issuing, renewing, transferring and cancelling licenses to harvest fish;*

(g) *issuing, renewing, transferring and cancelling licences to process fish;*

(h) *enhancing knowledge and understanding of the ocean ecosystems supporting adjacent fisheries; and*

(i) *integrating scientific research with knowledge and data gathered by resource users.*

The criteria and policy directions for the Board in relation to licensing of processing would be established by both orders of government through the initial Board design.

Enforcement functions could remain within each government department, but with general policy coordinated by the Board. The Department of Fisheries and Aquaculture would be responsible for the enforcement of processing regulations and quality standards. The Department of Fisheries and Oceans would maintain its current enforcement role.

While the province is requesting authority to manage its fisheries jointly with the federal government, there are many aspects of oceans management that should appropriately remain within the federal purview. Canada has international commitments and obligations, which the province recognizes must be fulfilled at the national level. The federal government would retain jurisdiction over international negotiations, international surveillance, enforcement, port access, transport and international trade, among other critical responsibilities.

Newfoundland and Labrador Fisheries Research Council

It is proposed that the current scientific function of the Department of Fisheries and Oceans be moved to a new entity: the Newfoundland and Labrador Fisheries Research Council. The Council would report directly to the Board and would be responsible for all scientific research currently undertaken by DFO in adjacent waters. The level of research would be determined by the Board, operating under consensus guidelines and policies developed by both orders of government.

The Council would be responsible for scientific research on all stocks, including groundfish, shellfish, pelagics and marine mammals. Its research would provide the scientific basis for conservation and sustainable use of fishery resources. This would include advice on conservation objectives and marine ecosystem issues.

The Council would report to the Board, and the information provided would be used as the basis for fisheries management decisions. The Board would have authority to request particular research; however, conventional peer review processes would remain in place. It is important that scientists remain independent from management, while vested with a degree of accountability.

Board Decision Making

The Board would follow management policies and principles established by both governments. These policies or guidelines would provide a system of accountability and would guide the actions of the Board. The Chairperson would have the deciding vote. Should either government disagree with a decision of the Board, both governments would have to agree to veto or refuse a decision.

One of the difficulties associated with shared and equal jurisdiction lies in dealing with decisions that may be contrary to the positions of either government. The proposed model will require that fundamental decisions of the Board would stand, unless both responsible ministers agree to overturn them. Any fundamental decision could be reversed only by the Board or a joint decision of both governments.

The Board would remain at arms-length from both governments. Governments would not make decisions in relation to the day-to-day operations of the Board, rather input would be provided in the development of guiding principles and policies in the initial design of the Board. These policies would define conservation requirements, criteria for harvesting, license allocation and TACs, and other Board operations.

All decisions of the Board would be made public, and the Board would be required to provide, in writing, reasons for its decisions. This would ensure that the Board operates in an open and transparent manner.

Board Composition

It is proposed that the Board consist of seven members, with three representatives appointed by the Minister of Fisheries and Oceans and three appointed by the Minister of Fisheries and Aquaculture. The Chairperson would be appointed jointly by both orders of government. In the event that the governments cannot agree on a Chairperson, a three-person panel would be established to select the Chairperson. All members on the Board would be required to have experience and or knowledge of the fishing industry. No members of the Board could be government employees.

The Board would meet at least once a month. Other meetings could be called to review a specific issue at the discretion of the Board, at the request of at least two members or at the request of either the federal or the provincial minister.

6.0 Conclusion

Clearly, unilateral federal management has not worked in the best interest of this province or the adjacent fish stocks. The Government of Newfoundland and Labrador is of the strong view that recovery of resources and sustainable fisheries will not be achieved under the existing management approach or structure. Lack of transparency and openness in the current system creates undue pressure and conflict among those involved in the industry, too often resulting in decisions and actions that compromise rather than promote conservation. Nowhere has the impact been greater than in Newfoundland and Labrador. Changes must occur, so that the people of this province and this country can be assured that future decisions will be made with their best interests in mind.

APPENDICES

APPENDIX I

RESOLUTION

Be it resolved by the House of Assembly as follows:

WHEREAS the seacoast fisheries of Newfoundland and Labrador were brought into this nation with Newfoundland and Labrador's accession to Canada;

AND WHEREAS the Government of the Dominion of Newfoundland held and exercised responsibility for the management of seacoast fisheries prior to Confederation;

AND WHEREAS the *Constitution Act, 1867* vests in the Government of Canada exclusive authority over the fishery;

AND WHEREAS under current International Law an independent Newfoundland and Labrador would control its adjacent resources including the fishery;

AND WHEREAS federal management of seacoast fisheries since 1949 has failed to adequately protect or develop the principal fisheries adjacent to Newfoundland and Labrador;

AND WHEREAS failed federal fisheries management has led to the complete collapse of the Northern Cod fishery and other ground fish stocks, the basis for Newfoundland's colonization and the mainstay of its economy for 500 years;

AND WHEREAS the federal government has failed to adopt a comprehensive plan for stock recovery since the groundfish moratoria were declared in the early 1990s;

AND WHEREAS it is recognized and accepted that the Government of Newfoundland and Labrador has maintained and continues to exercise primary regulatory authority over the fish processing industry in this Province;

AND WHEREAS new fisheries for species such as crab and shrimp have developed in the wake of the collapse of ground fish stocks and solid, sustainable management practices are vital to the future of these fisheries;

AND WHEREAS it is accepted that the regulation of fish harvesting and processing should occur in a seamless and integrated way;

AND WHEREAS the Government of Newfoundland and Labrador has consistently requested a greater say in fisheries management since 1949 and has identified this as a priority in *Securing our Future: The Renewal Strategy for Jobs and Growth*;

AND WHEREAS the fishery remains an economic mainstay and principal industry of Newfoundland and Labrador and the economic and social foundation of most of its rural communities;

AND WHEREAS federal management of fisheries adjacent to Newfoundland and Labrador does not give due regard to local experience and considerations;

AND WHEREAS the advice of the Fisheries Resource Conservation Council (FRCC), which was established to integrate practical knowledge derived from local experience and scientific information on resources, has been largely ignored in the federal government's recent declaration of a moratorium for 4RS3Pn Gulf cod;

AND WHEREAS the recent decisions of the Government of Canada on 2J3KL Northern Cod and 4RS3Pn Gulf cod were undertaken without proper consultation with the Government of Newfoundland and Labrador and the people who depend upon these resources and with disregard for the recommendations of the Fisheries Resource Conservation Council;

AND WHEREAS these decisions have further undermined the confidence of Newfoundlanders and Labradorians in the effectiveness of federal fisheries management;

AND WHEREAS other provinces control their main resource industries;

AND WHEREAS significant and decisive action is required to address this concern;

THEREFORE BE IT RESOLVED THAT this House call on the Government of Canada and direct the Government of Newfoundland and Labrador to begin negotiations leading to the establishment of a joint management regime over the fisheries adjacent to Newfoundland and Labrador;

AND BE IT FURTHER RESOLVED that the principal elements of such a joint management regime include

(1) the establishment, through an amendment of the Terms of Union, of shared, equal, constitutional authority by the Province of Newfoundland and Labrador and Canada over the fisheries adjacent to the province;

(2) the establishment through an amendment of the Terms of Union of a joint fisheries management board and the delegation to that board by the governments of Newfoundland and Labrador and Canada of sufficient of their authority to permit that board to successfully implement this joint management regime.

(3) the development and implementation of a conservation and re-building plan aimed at the achievement of long-term sustainability of the fisheries in the waters adjacent to Newfoundland and Labrador and in particular a plan that would achieve the recovery of the ground fish stocks;

(4) the development and implementation of fisheries harvesting plans, including the establishment of Total Allowable Catches, based on the principles of conservation, sustainability, adjacency and the long-term well-being of the fishing communities of rural Newfoundland and Labrador;

(5) the establishment of programs in Newfoundland and Labrador to enhance knowledge and understanding of the ocean ecosystems adjacent to Newfoundland and Labrador through the encouragement and support of scientific research and the utilization of customary and experiential knowledge of the fisheries possessed by fish harvesters.

APPENDIX II

BILL

An Act Respecting Joint Management Of The Fisheries Adjacent To The Province Of Newfoundland And Labrador

May 15, 2003

A BILL

AN ACT RESPECTING JOINT MANAGEMENT OF THE FISHERIES ADJACENT TO THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Canada-Newfoundland and Labrador Fisheries Management Board Act*.

PART I
INTERPRETATION

Definitions

2. In this Act

(a) "adjacent fisheries" includes all fishing activity in the NAFO Convention Area Divisions 2G, 2H, 2J, 3K, 3L, 3O, 3N, 4R and Subdivisions 3Pn and 3Ps

(i) that occurs within the territorial sea of Canada as defined in the *Oceans Act* (Canada),

(ii) that occurs within the exclusive economic zone of Canada as defined in the *Oceans Act* (Canada), where the province historically has the preponderant share of the total allowable catch in a fishery, and

(iii) for sedentary species.

(b) "board" means the Canada-Newfoundland and Labrador Fisheries Management Board established by the joint operation of section 5 of this Act and the federal Act;

(c) "chief executive officer" means the chief executive officer of the board appointed under section 28;

(d) "federal Act" means the Act of Parliament that jointly with this Act establishes the board;

(e) "federal government" means the Governor-General in Council;

(f) "federal minister" means the Minister of Fisheries and Oceans of Canada or another minister of the Crown in right of Canada that may be designated under the laws of Canada as the minister responsible for the federal Act;

(g) "fish" includes

(i) parts of fish,

(ii) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and

(iii) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

(h) "fishing" means fishing for, catching or attempting to catch fish by any method;

(i) "fundamental decision" means a decision made by the board

(i) approving or amending an integrated fisheries management, conservation harvesting or recovery plan that increases or decreases the total allowable catch for a fish stock,

(ii) to open or close a fishery,

(iii) respecting the issuance, transfer, or cancellation of a harvesting or processing licence,

(iv) establishing or amending the principles governing allocation of resources described in section 34; and

(v) respecting the exercise of a power or the performance of a duty under the regulations that expressly provides that it is to be exercised or performed subject to section 25 of this Act;

(j) "government" means the federal government, the provincial government or both, as the context requires;

(k) "minister" means the federal minister, the provincial minister or both, as the context requires;

(l) "NAFO" means the Northwest Atlantic Fisheries Organization established under the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries;

(m) "provincial government" means the Lieutenant-Governor in Council;

(n) "provincial minister" means the minister of the Crown in right of the province appointed under the *Executive Council Act* as the provincial minister for the purpose of this Act; and

(o) "sedentary species" means a species of living organism that, at the harvestable stage, either is immobile on or under the seabed or is unable to move except in constant physical contact with the seabed or subsoil.

Application

3. (1) This Act applies to adjacent fisheries.

(2) The federal government and the provincial government may jointly make regulations prescribing the statutes and regulations of the province and of Canada which shall not apply to adjacent fisheries.

Approval for making regulations

4. Before a regulation is made under this Act, the provincial minister shall consult the federal minister with respect to the proposed regulation and a regulation shall not be made without the approval of the federal minister.

Precedence over other Acts

5. In case of an inconsistency or conflict between

(a) this Act or regulations made under this Act; and

(b) any other Act of the legislature that applies to adjacent fisheries or regulations made under that Act,

this Act and the regulations made under this Act take precedence.

PART II
BOARD

Jointly established board

6. (1) There is established, by the joint operation of this Act and the federal Act, a board, to be known as the Canada-Newfoundland and Labrador Fisheries Management Board.

(2) The board shall be treated as having been established under a law of the province.

(3) The board has the legal powers and capacities of a corporation incorporated under the *Canada Business Corporations Act* (Canada), including those set out in section 20 of the *Interpretation Act*.

(4) The board may only be dissolved by the joint operation of an Act of the Parliament of Canada and an Act of the Legislature.

Members of board

7. (1) The board shall consist of 7 members.

(2) Three members of the board are to be appointed by the federal government, 3 by the provincial government and the chairperson of the board is to be appointed by both the federal government and the provincial government.

(3) One or 2 members of the board may be designated to be vice-chairpersons of the board if they are so designated by both the federal government and the provincial government.

(4) The designation of a vice-chairperson of the board under subsection (3) is effective after both governments have each made the designation.

(5) Each government may appoint 1 alternate member to act as a member of the board in the absence of a member of the board appointed by that government.

(6) Notwithstanding subsection (2) or (5), a member or alternate member of the board may be appointed by both the federal government and the provincial government.

Qualifications of members

8. (1) A member of the board shall not, during the term of office of that member on the board, be employed in the public service of Canada or be an employee of the province.

(2) In this section, "public service of Canada" has the same meaning as in the federal Act.

Consultation and appointment of chairperson

9. (1) Consultation between the 2 governments with respect to the selection of the chairperson of the board is considered to begin

(a) 6 months before the expiration of the term of office of the incumbent chairperson; or

(b) where applicable, on the date of receipt by the board of notice of the death, resignation or termination of appointment of the incumbent chairperson,

whichever occurs earlier.

(2) Where the 2 governments fail to agree on the appointment of the chairperson of the board within 3 months after the beginning of consultation between the governments, the chairperson shall be selected by a panel, consisting of 3 members and constituted in accordance with this section, unless, prior to the selection of the chairperson by the panel, the 2 governments agree on the appointment.

(3) One member of the panel shall be appointed by each government within 30 days after the 3 months referred to in subsection (2).

(4) The chairperson of the panel shall be appointed

(a) jointly by the 2 members of the panel appointed under subsection (3) within 30 days after the later of the 2 appointments made under that subsection; or

(b) where the 2 members of the panel fail to agree on the appointment of the chairperson of the panel within the 30 day period referred to in paragraph (a), by the Chief Justice of Newfoundland and Labrador within 30 days after the expiration of that period.

(5) The chairperson of the board shall be selected by the panel within 60 days after the appointment of the chairperson of the panel.

(6) The decision of the panel selecting a chairperson of the board is final and binding on both governments.

Terms and conditions of appointments

10. (1) The salary and other terms and conditions of the appointment of the chairperson of the board or other members or alternate members appointed by both governments, including the effective date of the appointment, shall be fixed by an order of the federal government and an order of the provincial government after agreement has been reached by both governments on the salary and other terms and conditions.

(2) The salary and other terms and conditions of the appointment of a member appointed by either the federal government or the provincial government shall be agreed on by both governments.

Absence or incapacity of chairperson

11. The board shall designate a member to act as chairperson of the board during an absence or incapacity of the chairperson or vacancy in the office of chairperson, and that person, while acting as chairperson, has and may exercise the powers and perform the duties and functions of the chairperson.

Term of office

12. (1) The first chairperson of the board shall be appointed for a term of 7 years.

(2) The first 3 members of the board to be appointed by each government shall be appointed for terms of 4, 5 and 6 years, respectively.

(3) On the expiration of the initial terms of office referred to in subsections (1) and (2), the chairperson and members of the board shall be appointed for terms of 6 years.

(4) A member of the board, including the chairperson, shall hold office during good behaviour, but may be removed for cause

(a) where that member is appointed by either government, by that government; or

(b) where that member is appointed by both governments, by both governments.

(5) On the expiration of a term of office, the chairperson or a member of the board is eligible for reappointment.

Conflict of interest and insurance

13. (1) Members of the board, including the chairperson, and the chief executive officer appointed under subsection 28(1) shall be subject to conflict of interest guidelines established jointly by the federal minister and provincial minister and are not subject to conflict of interest guidelines established by the provincial government.

(2) The board shall purchase and maintain insurance for the benefit of a person who is a present or former member, officer or employee of the board, and the heirs and legal representatives of that person, against any liability incurred by that person in the capacity of such

a member, officer or employee, except where the liability relates to a failure to act honestly and in good faith with regard to the best interests of the board.

(3) The expenditures of the board associated with purchasing and maintaining the insurance referred to in subsection (2) shall form part of the budget or revised budget of the board in respect of a fiscal year.

(4) Notwithstanding subsection (2), where the board has established to the satisfaction of the provincial board the impossibility of purchasing and maintaining the insurance referred to in subsection (2), the government of the province shall indemnify a person who is a present or former member, officer or employee of the board, or the heirs or legal representatives of that person, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred in respect of a civil, criminal or administrative action or proceeding to which that person is a party by reason of being or having been such a member, officer or employee, where that person

(a) acted honestly and in good faith with a view to the best interests of the board; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, believed, on reasonable grounds, that the conduct in issue was lawful.

(5) Where the board has purchased and maintained insurance referred to in subsection (2), the government of the province shall indemnify a person referred to in that subsection, or the heirs or legal representatives of that person, for any liability incurred by that person in accordance with this section to the extent that the insurance purchased for the benefit of that person does not cover that liability.

(6) The government of the province is not obliged to indemnify anyone under subsection (4) against an amount paid to settle an action unless the amount so paid was approved by the government of the province.

(7) Where the Government of Canada has indemnified a person referred to in subsection (4), or the heirs or legal representatives of that

person, under the federal Act, the government of the province may pay to the Government of Canada 1/2 of the amount so indemnified.

(8) An amount payable in respect of indemnification under this section may be paid out of the Consolidated Revenue Fund.

Functions of board

14. (1) The board shall perform the duties and functions that are conferred or imposed on the board under this Act and regulations made under it.

(2) The board may make recommendations to both governments with respect to proposed amendments to this Act, the federal Act and regulations made under those Acts.

Access to information by governments

15. The federal minister and the provincial minister are entitled to access to information or documentation relating to adjacent fisheries that is provided for the purposes of this Act or a regulation made under this Act and that information or documentation shall, on the request of either minister, be disclosed to that minister without requiring the consent of the party who provided the information or documentation.

Meetings of board

16. A meeting of the board shall be held

(a) once a month unless the members of the board unanimously agree to defer a meeting; and

(b) at other times

(i) at the call of the chairperson of the board,

(ii) on the request of 2 members of the board, or

(iii) on the request of the federal minister or the provincial minister to review a matter referred to it by that minister.

Quorum and majority vote

17. (1) Four members constitute a quorum of the board.

(2) Where, in the absence of unanimous agreement, a vote is required to be taken in respect of a decision of the board, the decision shall be made on the basis of a majority vote of the members of the board.

Locations of offices and staff

18. The principal office and staff of the board shall be located in the province.

Storage of information

19. The board shall establish, maintain and operate a facility in the province for the storage and curatorship of all records relating to adjacent fisheries and scientific research in relation to those fisheries and the waters and ocean ecosystems that support them.

By-laws and guidelines

20. The board may

(a) make by-laws respecting

(i) the members, officers and employees of the board,

(ii) the attendance and participation, including voting rights, at meetings of the board of alternate members of the board appointed under subsection 7(5),

(iii) the manner of appointing the officers and employees of the board on the basis of merit, including the holding of open competitions for appointing the officers and employees,

(iv) the procedures to be followed in the performance of the duties and functions of the board,

(v) the conduct of meetings of the board,

(vi) the manner of dealing with matters and business before the board, and

(vii) generally, the carrying on of the work of the board and the management of internal affairs of the board; and

(b) establish conflict of interest guidelines respecting persons employed by the board under subsection 29(1).

PART III
BOARD JURISDICTION

Fisheries management

21. (1) The board shall be responsible for all aspects of management of adjacent fisheries in accordance with regulations made under section 35, including

(a) establishing and implementing integrated fisheries management, conservation harvesting and recovery plans for fish stocks;

(b) establishing total allowable catches for fish stocks;

(c) distributing allocations within the allowable catch;

(d) opening and closures of fisheries;

(e) conservation and habitat preservation measures;

(f) issuing, renewing, transferring and cancelling licenses to harvest fish;

(g) issuing, renewing, transferring and cancelling licences to process fish;

(h) enhancing knowledge and understanding of the ocean ecosystems supporting adjacent fisheries; and

(i) integrating scientific research with knowledge and data gathered by resource users.

(2) The board shall make policies respecting the inspection and enforcement responsibilities of the provincial and federal governments and monitor and report on the effectiveness of those activities.

Fundamental principles

22. In carrying out its duties and functions under this Act the board shall promote

(a) long-term sustainability of adjacent fisheries and in particular the recovery of the ground fish stocks;

(b) conservation of fisheries resources and habitat;

(c) understanding of ocean ecosystems; and

(d) recognition of the historical and socio-economic dependence of communities within the province on fisheries.

Allocation principles

23. The board shall establish principles to govern the allocation of resources which recognize:

(a) adjacency of resource users to fish stocks;

(b) historical dependency of resource users on fish stocks; and

(c) economic dependency of resource users on fish stocks.

Board's decision final

24. Except with respect to a fundamental decision, the exercise of a power or the performance of a duty by the board under this Act is final and not subject to the review or approval of either government or either minister.

Notice of fundamental decisions

25. (1) Where a fundamental decision is made by the board, the board shall, immediately after making the decision, give written notice of that decision to the federal minister and the provincial minister.

(2) A fundamental decision shall be implemented by the board unless the federal minister and the provincial minister advise the board, in writing, within 30 days after receipt of a notice under subsection (1), that they both disapprove that decision.

(3) A fundamental decision may be implemented by the board before the expiry of the 30 days referred to in subsection (2), where the federal minister and the provincial minister advise the board, in writing, that they do not intend to disapprove the decision.

(4) Where the federal minister and provincial minister advise the board under subsection (2) that they disapprove of a fundamental decision, the federal minister and provincial minister may by order require the board to implement a substitute decision within the time and on the terms and conditions specified in the order.

Ministerial directives

26. (1) The federal minister and the provincial minister may jointly issue to the board written directives in relation to

(a) fundamental decisions;

(b) public hearings conducted under section 27; and

(c) studies to be conducted by the board and advice with respect to policy issues to be given by the board to the federal minister and the provincial minister.

(2) The board shall comply with a directive issued under subsection (1).

(3) Directives issued under subsection (1) are not subordinate legislation for the purposes of the *Statutes and Subordinate Legislation Act*.

(4) Where a directive is issued under subsection (1), a notice shall be published in the *Gazette* that the directive has been issued and that the text of it is available for inspection by a person on request made to the board.

Public hearings

27. (1) The board may hold a public hearing in relation to a decision to be made or implemented by the board under this Act where the board is of the opinion that a public hearing is in the public interest.

(2) Where the board holds a public hearing, the members of the board have the powers of a commissioner appointed under the *Public Inquiries Act*.

PART IV
STAFF AND ADMINISTRATION

Chief executive officer

28. (1) There shall be a chief executive officer of the board who,

(a) where both the federal government and the provincial government appoint the chairperson as chief executive officer, is chairperson of the board; or

(b) in other cases, is to be appointed by the board by means of an open competition.

(2) The appointment of a chief executive officer under paragraph (1)(b) is subject to the approval of both governments.

(3) Where either government fails to make an appointment under paragraph (1)(a) or to approve the appointment of a chief executive officer under paragraph (1)(b), the chief executive officer shall be appointed by both the federal government and the provincial government after having been selected in accordance with section 8 and that section applies, with the necessary changes, to the selection of the chief executive officer.

(4) Subsection 10(1) applies, with the necessary changes, to the appointment of the chief executive officer under paragraph (1)(a) or subsection (3).

(5) The board shall designate a person to act as chief executive officer during an absence or incapacity of that officer or a vacancy in the office of chief executive officer and that person, while acting as chief executive officer, has and may exercise the powers and perform the duties and functions of that office.

Staff of the board

29. (1) The board may, on the recommendation of the chief executive officer, employ other officers and employees that are necessary to properly perform the duties and functions of the board under this Act.

(2) A person employed under subsection (1) shall be appointed on the basis of merit.

(3) Except as provided in subsections (4) and (5), a person employed under subsection (1) is considered not to be employed in the public service of Canada or of the province.

(4) Notwithstanding the *Public Service Commission Act,* for the purpose of being eligible to enter competitions under that Act and for the purpose of section 12 of that Act, a person who, immediately before becoming employed by the board, was employed in the public service of the province shall be considered to be a person employed in the public service in the province in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the board.

(5) Notwithstanding the *Public Service Commission Act,* for the purpose of being eligible to enter competitions under that Act and for the purpose of section 12 of that Act, a person who, immediately before becoming employed by the board, was not employed in the public service of the province shall, 2 years after becoming employed by the board, be considered to be a person employed in the public service of the province in a position of an occupational nature and at a level equivalent to the position in which that person is employed by the board.

Auditor

30. The board shall appoint an auditor of the board, for the term that is set by the board, for the purposes of auditing the financial statements of the board.

Budget and appropriation

31. (1) The chief executive officer shall, in respect of each financial year, prepare a budget for the board sufficient to permit the board to properly exercise its powers and perform its duties and functions.

(2) Following approval of the budget by the board, the budget shall be submitted to the federal minister and the provincial minister, at the time that may be specified by each minister, for their consideration and approval.

(3) Where it appears that the actual aggregate of the expenditures of the board in respect of a financial year is likely to be substantially greater or less than that estimated in its budget in respect of that financial year, the board shall submit to both ministers for their consideration and approval a revised budget in respect of that financial year containing the particulars that may be requested by either minister.

(4) The provincial government shall pay a percentage of the aggregate of the expenditures set out in the budget or revised budget, where applicable, submitted and approved under this section in respect of each financial year, that is commensurate with its share of the total federal and provincial expenditures on fisheries management in the fiscal year preceding the year this Act comes into force.

(5) Subject to another Act of the Legislature that appropriates money for the payment required by subsection (4), the sums required for that payment shall be paid out of the Consolidated Revenue Fund as required.

Access to books and accounts

32. The federal minister and the provincial minister are entitled to have access to the books and accounts of the board.

Annual report

33. (1) The board shall, in respect of each financial year, prepare a report and submit it to the federal minister and the provincial minister not later than 90 days after the expiration of that financial year.

(2) Each annual report submitted under subsection (1) shall contain an audited financial statement and a description of the activities of the board during the financial year covered by the report.

(3) The provincial minister shall lay the report referred to in this section before the House of Assembly within the first 15 days during which the House of Assembly is sitting after the day the report is submitted to the provincial minister.

(4) Where it is not possible to lay the report before the House of Assembly within 30 days after the day the report is submitted to the provincial minister, the provincial minister shall publish that report within that 30 day period.

PART V
GENERAL

Research council

34. (1) The Newfoundland and Labrador Fisheries Research Council is established to provide the board and the provincial and federal governments with information and advice on the scientific aspects of the management of adjacent fisheries.

(2) The council shall

(a) advise the board on requirements for research and investigation;

(b) review data gathered by the council and other agencies and advise the board on data collection methodologies;

(c) conduct and review scientific research and resource assessments; and

(d) make public recommendations to the board and ministers.

(3) The council shall consist of not more than 10 members appointed by the board.

(4) There shall be an equal number of members on the council representative of industry and the scientific community.

(5) The terms and conditions of appointment to the council shall be in accordance with the regulations.

Regulations

35. (1) The Lieutenant-Governor in Council shall make regulations delegating the authority to the board that is necessary to permit the board to carry out its functions and duties under this Act and the regulations made under it.

(2) The Lieutenant-Governor in Council may make regulations

(a) for the proper management and control by the board of adjacent fisheries;

(b) respecting the conservation and protection of fish;

(c) respecting the catching, loading, landing, handling, transporting, possession and disposal of fish;

(d) respecting the operation of fishing vessels and the use of fishing gear and equipment;

(e) respecting the issue, transfer, suspension and cancellation of licences by the board to harvest fish and the terms and conditions under which a licence may be issued;

(f) respecting the keeping of records in relation to fishing and fish processing;

(g) respecting the conservation and protection of spawning grounds;

(h) respecting the issue, transfer, suspension and cancellation of licences by the board to handle, process, store, grade, transport and market fish;

(i) respecting the licensing of establishments used in or in connection with handling, processing, storing, grading, transporting or marketing fish;

(j) respecting standards for establishments and of vehicles or equipment used in connection with an establishment referred to in paragraph (i);

(k) respecting the construction, manufacturing, importation, distribution, purchase or sale of fishing vessels or hulls to be outfitted as fishing vessels and materials to be used in the construction, repair or modification of those vessels; and

(l) respecting the terms and conditions of appointments to the council established under section 34.

Commencement

36. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.

APPENDIX III

GLOSSARY

Access	The opportunity to harvest or use the fisheries resource, generally permitted by licences or leases issued.
Allocation	The amount or share of the fisheries resource or allowable catch that is distributed or assigned to those permitted to harvest the resource.
Banks of Newfoundland	Grand Banks of Newfoundland.
Coastal State	Nation or territory immediately adjacent to a sea or ocean.
Conservation	Sustainable use of a resource, that safeguards ecological processes and genetic diversity for present and future generations.
Constitution	The Constitution of Canada, as set out in the *Constitution Act, 1867* and the *Constitution Act, 1982*, as amended.
Custodial Management	Management by the adjacent coastal state of designated fish stocks that straddle the 200 mile Exclusive Economic Zone (EEZ), for the purpose of applying consistent conservation-based measures.
Fisheries Act	An Act governing the management of fisheries in Canadian waters.
F_{max}	A rate of mortality through fishing that will result in no change in the stock.
FRCC	***Fisheries Resource Conservation Council***: an independent panel established by the Minister of Fisheries and Oceans to provide advice and recommendations to the minister on the various groundfish stocks in Atlantic Canada.

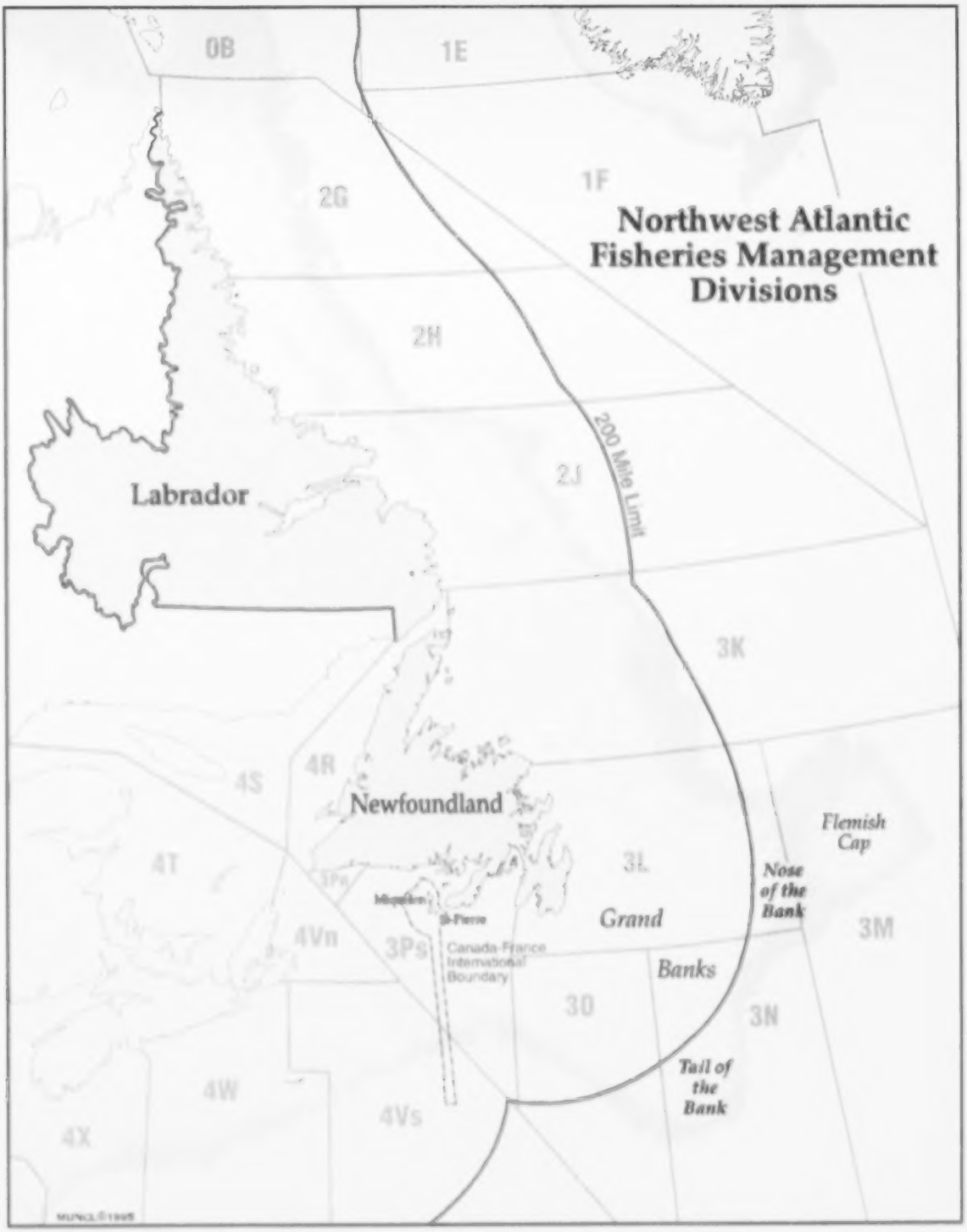
Groundfish	Species of fish living near the ocean bottom, such as cod, haddock, halibut and flatfish.
Gulf Cod Stock	Cod (*Gadus Morhua*) in Northwest Atlantic Fisheries Organization (NAFO) divisions 3Pn+4RS.
Inshore Sector	The sector of the fishery comprising vessels under 65 feet.
Moratorium	Prohibition or suspension of fishing.
Northern Cod	Cod (*Gadus Morhua*) off Southern Labrador and Eastern Newfoundland in NAFO divisions 2J+3KL.
Northern Shrimp	Northern or pink shrimp (*pandalus borealis*).
Sedentary Species	Species including those organisms that, at the harvestable stage, live on or just below the ocean floor and those that are unable to move except in constant physical contact with the sea bed or subsoil. Examples include snowcrab, clams, scallops and lobster. Under Article 77 of the United Nations Convention of the Law of the Sea, the coastal state has sovereign rights for exploring and exploiting sedentary species on its continental shelf, both inside and outside the 200-mile limit. Canada's continental shelf includes the Nose and Tail of the Grand Banks and the Flemish Cap.
Shellfish	Shelled molluscs and crustaceans. Examples include snow crab, shrimp and scallops.
Sustainability	See ***sustainable development*** below.
Sustainable development	Development that meets the needs of the present generation without compromising the ability of future generations to meet their needs. This implies a specific commitment to the management of coastal regions and resources in an environmentally-responsible manner that defines and acknowledges risk.

Stock	A population of one species found in a particular area; the basic unit for fisheries management (**Note**: all of the individuals in a stock should have similar growth and migration patterns).
TAC	***Total Allowable Catch***: the total amount allowed to be caught from a particular stock during a particular period of time. Normally, the collective quota for Canadian fishers is equal to the TAC. However, in some cases, the TAC includes international allocations or foreign quotas and quota designated for other users.
Terms of Union	Memorandum of Agreement entered into on the Eleventh day of December 1948, between Canada and Newfoundland. Newfoundland and Labrador's Terms of Union with Canada are a schedule to the *Newfoundland Act, 12-13 Geo. VI c. 22 (UK)*. The *Newfoundland Act* forms part of the Constitution of Canada.

APPENDIX IV

Map

Northwest Atlantic Fisheries Management Divisions


Northwest Atlantic
Fisheries Management
Divisions
0B
1E
1F
2G
2H
2J
3K
3L
3M
3N
3O
3Ps
4R
4S
4T
4Vn
4Vs
4W
4X
Labrador
Newfoundland
200 Mile Limit
Flemish
Cap
Nose
of the
Bank
Grand
Banks
Tail of
the
Bank
St-Pierre
Canada-France
International
Boundary

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